IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ALBANY DIVISION

JOSEPH EMANUEL BANKS, :

Plaintiff

:

VS. : 1:07-CV-215 (WLS)

BRUCE SHIVER, MICHAEL GIVENS, and DR. ODOM,

:

Defendants.

RECOMMENDATION

The plaintiff filed this action on December 10, 2007. After filing motions for appointment of counsel and for extension of time to respond to the defendants' summary judgment motion in June 2008, the plaintiff has not filed any further motions or pleadings. The plaintiff's last communication with the court was a letter received by the court on August 26, 2008. By order of the court dated February 4, 2009, the plaintiff was allowed additional time to respond to defendants' motion for summary judgment and was directed to file a response to the defendants' motion. On February 11, 2009, the plaintiff's service copy of the court's February 4 order was returned as undeliverable, with the notation "Released 9-13-8".

Under Rule 41(b) of the Federal Rules of Civil Procedure, a case may be dismissed upon a determination of a "clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985). Litigants proceeding *pro se* are not exempted from this requirement of diligent prosecution. Moon v. Newsome, 863 F.2d 835 (11th Cir. 1989). The court's inherent power to dismiss cases in which

the plaintiff has failed to diligently prosecute his action "is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District

Courts." Link v. Wabash R.R., 370 U.S. 626, 630 (1962).

A review of this entire action reveals a clear record of delay or willful contempt on the part of the plaintiff. The plaintiff has had no communication with the court since submitting a letter on August 26, 2008, and has failed to inform the court as to his current address after having been released from custody in September 2008. Inasmuch as the plaintiff has failed to respond to the court's order requiring a response to the defendants' motion(s) for summary judgment and has failed to keep the court informed as to his current address, it is the recommendation of the undersigned that this action be **DISMISSED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 12th day of February, 2009.

/s/ Richard L. Hodge

RICHARD L. HODGE UNITED STATES MAGISTRATE JUDGE

asb